COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

Appeal From Order No. 194 of 2001

M/s United India Insurance Company Limited.

Versus

Smt. Chandra Rani and others.

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Date: 12-05-2006 ***Initials of Judge***

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 194 Of 2001
Old FAFO NO. 771 of 1982

M/s United India Insurance Company Limited,
Bajaj Building 17, Elmonston Road, Allahabad.

…**Appellant**

Versus

1. Smt. Chandra Rani, Widow of Late Sri Desh Raj,
   Resident of 118, Chakhuwala, Dehradun (Since deceased)
   Substituted by her legal heirs
1. Kamal Nagpal, S/O Late Desh Raj,
1/1 Sri Satish Nagpal, S/O Late Desh Raj,
½ Smt. Usha Rani, w/O late Prem Pal & daughter of
   Late Sri Desh Raj.
1/3 Kumari Sanjokta, D/O late Desh Raj,
   All residents of 118, Chukhuwala, Dehradun.
2. Sri Mool Chand Tyagi, S/O note known
   R/O Near Post Office Vikasnagar, District Dehradun.
3. Sri Mahendra Kumar Gupta, S/O Sri Gopi Chand,
   Resident of 114, Akhara Mohalla, District Dehradun..
4. Sri Yashpal, (Driver) C/O Sri Mahendra Kumar Gupta,
   114, Akhara Mohalla, District Dehradun.

… Respondents.

Sri K.K.Sah, Advocate, learned counsel for the appellant.
Sri T.A.Khan, Adv., learned counsel for the claimant-respondents.

Date: May 12, 2006.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 110-D of the Motor Vehicles Act, 1939 ***(in short the Act)*** against the judgment and Award, dated 11-8-1982, passed in M.A.C. Petition No. 127 of 1978, Smt. Chandra Rani Vs. Mool Chand Tyagi and others, by the Motor Accident Claims Tribunal/ Additional District Judge Dehradun ***(for short the Tribunal)***, whereby the Tribunal awarded compensation of Rs.36,000/- along with interest @ 6% per annum against the Insurance Company-O.P.No.4, as mentioned in the impugned order. Aggrieved, the Insurance Company-appellant has come up in the appeal.

Relevant facts of the case are that initially the claim petition under Section 110-B of the Act was filed by claimant Smt. Chandra Rani in respect of death of her husband Desh Raj, aged about 48 years and earning Rs. 400/- per month as salary in a vehicular accident involving Vehicle No. UTL-4638, which was being driven rashly and negligently by O.P.No.3 Yashpal on 11.7.1978 with the result the deceased sustained grievous injuries and consequently died. The claimant claimed compensation of Rs. 57,600/- It comes out from the record that the Vehicle was owned by O.P.No.2 who is the registered owner of the vehicle. Since the proposal for insurance of the vehicle was signed by Mool Chand Tyagi, he was arrayed as owner of the vehicle. The Opposite No. 4-appellant is the insurer of the vehicle.

The owner and driver of the vehicle did not come forward to contest the claim petition. Only the Insurance Company filed written statement and resisted the proceedings denying all the allegations made in the claim petition. It was pleaded that there was no contract between the owner and the insurance company and that the vehicle was not insured on the date of accident. It was asserted that on 15.7.78 Mool Chand Tyagi approached the agent of the company for insurance of the vehicle in question given effect to insurance from 10th July 1978. According to insurance company, it was informed by said Mool Chand that there was no claim for the period between 10th to 15th July, else he would be responsible. The proposal was submitted and deposited the premium of Rs. 387/-. Sri Tyagi not being the registered owner, the proposal was not accepted and the amount received was refunded.

On the pleadings of the parties, the learned Tribunal framed necessary issues. After recording the evidence led by the contesting parties, it was held that Desh Raj sustained injuries and died as a result thereof in the motor vehicle accident involving vehicle No. UTL-4638 due to rash and negligent driving by its driver. On the point of insurance, the learned Tribunal has

concluded that it is admitted by the Insurance Company that a Cover Note was issued, which was subsequently revoked. In the written statement, it was asserted by the appellant that the proposal was rejected almost three months later on the pretext that Mool Chand Tyagi who preferred the proposal was discovered to be not the registered owner. The contention of the Insurance Company that it came to know about the ownership of Vehicle was not accepted because in the proposal, Mahendra Kumar was mentioned to be the owner of the vehicle. The record of the case shows that on the basis of the proposal form, the insurance cover note was issued for the period 10-7-1978 to 9-7-1979, though it was issued on 15.7.78. The Insurance Company had undertaken in writing (paper no. 61B) that no claim had arisen between the period 10-7-1978 and 15-7-1978. The fact that Cover Note was issued w.e.f. 10-7-1978 goes against the plea taken by the Insurance Company. Before the Tribunal the Insurance Company-appellant entirely failed to substantiate its contentions raised in the written statement. Accordingly, the Tribunal has held that the vehicle was duly insured on the date of accident. Ultimately, the Tribunal awarded compensation of Rs. 36,000/- along with interest @ 6% per annum against the appellant-Insurance Company.

In this appeal, the impugned award has been assailed mainly on the ground that the finding of the Tribunal that the vehicle was insured on the date of accident is not based on evidence on record.

I have heard Sri K.K.Sah learned counsel for the appellant as well as Sri T.A.Khan, learned counsel for the claimant-respondent.

The learned counsel for the appellant in support of his contention has placed reliance in the case ***of "United India Insurance Co.Ltd. V. Ayeb Mohammed and others" [1991 ACJ, 650],*** wherein the Apex Court has considered the liability of the

Insurance Company on the fact that the Cover Note was issued by the Company but the premium of which was remitted by a cheque, which was ultimately dishonoured. The Apex Court observed that the fact of dishonour of the cheque was within the knowledge of the insured. In the case before the Apex Court, admittedly, the insurer had not received a single penny towards payment of premium. In the present case, the facts are entirely different. The case law relied upon by the appellant does not apply to the facts of the present case.

As narrated above, the record shows that the Cover Note was issued by the agent of the Insurance Company effective from 10-7-1978 and a premium of Rs. 387/- was accepted by the Insurance Company. In the proposal form which was submitted by Mool Chand Tyagi, the name of the owner was mentioned as Mahendra Kumar. Not only this, event the Insurance Company obtained an undertaking in writing from the said Mool Chand that no claim had arisen between the period 10th July and 15th July, 1978, which is paper no. 61B on record. The record clearly shows that all the facts were within the knowledge of the Insurance Company and before the Tribunal the Insurance Company has tried to overlap the default/lacuna which was either committed by the agent of the Insurance Company or by the company itself so as to absolve itself from the liability to pay compensation. In case, the agent of the company had committed any fraudulent act, it was open to the Insurance Company to have proceeded against its own servant.

A reference may be made to the Apex Court judgment in the case of ***Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and others [(1998) 1, Supreme Court Cases, 371],*** wherein it was held that ***"despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to***

satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon this question the Supreme Court did not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured." It was further held in paragraph no. 10 that ***"The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium."*** Moreover, in the case at hand, the Insurance Company did receive the amount of premium in cash, which was ultimately refunded almost after a period of three months. Clearly in this case, the vehicle in question was fully covered by the Cover Note issued by the Company or its agent showing the validity of insurance w.e.f. 10-7-1978 to 9-7-1979. It is admitted that the policy of insurance was revoked subsequently much after the date of accident, i.e. almost after about three months. The entire matter and the evidence have been elaborately discussed by the learned Tribunal. It may be added here that before the Tribunal, neither the owner of the vehicle nor the driver came forward to contest the case and it was the Insurance Company alone to resist the claim petition. The Insurance Company had sufficient opportunity to lead evidence to substantiate its stand but it could not do so, though D.W.1 R.Sarin an official of the Insurance Company has appeared in the witness box, who had admitted that a Register of Cover Notes is maintained, but even the same was not produced before the Tribunal to show the validity of the period of insurance cover note.

Having considered the facts and circumstances coupled with the oral and documentary evidence on record from all the four corners, I am of the view that no infirmity or illegality has been committed by the Tribunal in passing the impugned award against the appellant-Insurance Company. The appeal is devoid of merit and is liable to be dismissed.

The appeal is hereby dismissed. The judgment and award under appeal is upheld. No order as to costs.

The amount in deposit with Court, if any, be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

(B.S. Verma, J.)

R.C.P.